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PLEASE SLUG REPLIES FOR ISN/MNSA - SCOTT DAVIS / TERRILL RAY / STEVE ADAMS
GENEVA FOR CD DELEGATION
UNVIE FOR IAEA

E.O. 12958: N/A

TAGS: [ENRG](#) [KNNP](#) [MNUC](#) [PARM](#) [PREL](#) [NPT](#) [IAEA](#)

SUBJECT: NUCLEAR NON-PROLIFERATION TREATY (NPT)
PREPARATORY COMMITTEE MEETING: U.S. PROPOSED PAPERS

¶1. This cable requests action by COB April 25. Action embassies are requested to deliver the papers contained in paras 3 and 4 to host government officials responsible for NPT matters. CD Delegation in Geneva is requested to deliver the papers to other delegations that will be attending the PrepCom in Geneva (April 28 - May 9) and to PrepCom Chairman Voldymyr Yelchenko. UNVIE is requested to provide a copy of the paper on expanding peaceful nuclear cooperation to the French Mission in Vienna (Marc Albert), since France has proposed a similar paper. Since we are seeking multiple joint sponsors, posts need not put the name of host government after "joint paper presented by" at the beginning of each paper. When delivering the papers, action posts may draw on background information in paragraph 2 and may leave a copy of this information as a non-paper. Regarding the paper on nuclear energy, we recognize that not all NPT parties support such expansion but, in the interest of a common approach to all fellow Treaty members, would nevertheless like to share our paper with them. Posts will receive by Septel a cable or cables with a demarches on NPT issues also to be delivered in advance of the PrepCom.

¶2. Posts may draw from the following background information:

-- The United States looks forward to the upcoming Nuclear Non-Proliferation Treaty (NPT) Preparatory Committee (PrepCom) and places a high priority on a full discussion of all substantive matters at the meeting.

-- Among other common objectives, we believe that most NPT Parties share those of expanding international peaceful nuclear cooperation in proliferation-responsible ways, and of deterring and responding to withdrawal from the Treaty by parties that have violated it.

-- For this reason, we would like to provide you with copies of papers on these topics that we propose for joint sponsorship at the PrepCom. We are providing the papers to most other NPT parties. Many of the working papers submitted to NPT meetings are sponsored by more than one government.

-- We propose that your government join ours in sponsoring these documents as Working Papers at the upcoming PrepCom. We are very interested in any comments that you might have on the papers.

-- We hope that by pursuing agreement on ideas in both of these important Treaty areas, we can work toward consensus among NPT parties. This process will help focus our efforts at the second and third PrepComs, and will assist us in our effort to adopt common language at the 2010 Review Conference.

¶3. Begin paper on "Expanding International Civil Nuclear Cooperation"

Expanding International Civil Nuclear Cooperation

Joint Paper Presented by
(), and the United States
Second Session of the Preparatory Committee for the 2010 NPT
Review Conference
April - May 2008

The safe and secure uses of civil nuclear energy for peaceful purposes offers many benefits to humanity provided it does not contribute to the proliferation of nuclear weapons and meets the highest standards of safety and security. States Party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) share an interest in promoting and expanding the peaceful uses of nuclear energy in ways consistent with their shared nonproliferation objectives.

As set forth in Article IV of the NPT, all States Party have the right to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty., (Article II obligates non-nuclear weapon States Party not to manufacture or otherwise acquire nuclear weapons.) At the 2000 Review Conference, States Party also noted that peaceful use rights must be exercised in conformity with Article III - which requires safeguards on all source or special fissionable material in all peaceful nuclear activities within the territory of a non-nuclear weapon State, under its jurisdiction, or carried out under its control anywhere., In addition, Article IV specifies that all States Party undertake(s) to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy.,

These provisions have particular importance in today,s world. The demand for new sources of energy is increasing rapidly even as recognition grows that this demand must be met in ways that conserve existing resources and minimize the consumption of fossil fuels that can contribute to greenhouse gas emissions. Furthermore, rising energy demand relative to current supplies is increasing economic and other pressures facing most countries. It creates ever-stronger incentives to improve energy security and further diversify the available sources of supply. Civil nuclear power generation that is safely and securely regulated can provide an important part of the answer to meeting these challenges. More broadly, nuclear technology can make a key contribution to sustainable development, an important point addressed in the second paragraph of Article IV. In short, there exists today a widely-shared vision of growth in the use of nuclear energy, including in developing countries, to increase the supply of electricity, promote economic growth and development, and reduce reliance on fossil fuels, resulting in decreased pollution and greenhouse gasses.

International cooperation in the safe and secure uses of radioactive materials for civilian purposes provides important benefits in the fields of medical research and treatment, agriculture and food production, management of water resources (e.g., seawater desalination or isotope hydrology), environmental technology, materials science, improved industrial processes, and other areas. In short, responsible nuclear cooperation that is consistent with Article IV and the highest standards of nonproliferation, safety, and security offers enormous benefits that amply justify its maintenance and indeed expansion in light of current and projected future needs.

The NPT fosters the development of the peaceful uses of nuclear energy by providing a framework of confidence that promotes cooperation in peaceful uses. Nonproliferation requirements and mechanisms - most prominently compliance with Articles I, II, and III of the Treaty, as well as International Atomic Energy Agency (IAEA) safeguards agreements, including the Additional Protocol - lay the foundation for international nuclear cooperation by ensuring

that nuclear materials and facilities do not contribute to nuclear weapons proliferation. Civil nuclear cooperation also is underpinned by the Additional Protocol and agreements on safety and security, such as the Convention on Nuclear Safety, the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, the Convention on Supplementary Compensation for Nuclear Damage, and the Convention on the Physical Protection of Nuclear Material. Ensuring nuclear nonproliferation, nuclear safety, and nuclear security continue to be indispensable prerequisites to the peaceful civil uses of nuclear energy, including nuclear power generation, and provide the foundation for expanding international cooperation in nuclear energy applications.

Those countries that have decided to introduce nuclear energy into their energy mix understandably place a high importance upon the security of supply of nuclear fuel to develop and sustain their commitment to the peaceful use of nuclear energy. In order to facilitate the expansion of international nuclear cooperation, therefore, multiple proposals have been advanced for providing reliable access to nuclear fuel.

International arrangements for multilateral approaches to the nuclear fuel cycle strengthen the ability of States Party to choose the option of nuclear power without pursuing sensitive fuel cycle activities. Many countries are choosing to develop civilian nuclear capacity through commercial means that rely on assured fuel supplies, for such arrangements offer a cost-effective and responsible means to achieve access to the benefits of nuclear energy. Choices to forego any particular path, of course, are voluntary and therefore represent no abridgment of rights. The development of multilateral approaches to assuring the supply of nuclear fuel is an integral element of the responsible pursuit of access to nuclear energy, and such an approach helps advance the goals of Article IV. Such an approach would serve the objectives of strengthening non-proliferation, while preserving access to the benefits of nuclear energy and assurance of supply and services around the world. It is clear that a growing number of nations view reliable access to nuclear fuel as an important component of the international community's effort to fulfill the vision of Article IV in the 21st Century, helping ensure that nuclear energy makes a major contribution to global development consistent with nonproliferation and safety objectives.

End paper on "Expanding International Civil Nuclear Cooperation"

14. Begin paper on "Deterring and Responding to NPT Withdrawal by Treaty Violators"

Joint Paper Presented by
(), and the United States
Second Session of the Preparatory Committee for the 2010 NPT
Review Conference
April - May 2008

Because the continued integrity and efficacy of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is very important to international peace and security, all States Party to the NPT share an interest in ensuring that countries in violation of its provisions cannot shield themselves from the consequences of their noncompliance by withdrawing from it. States Party should make clear that they will work together to develop and implement more effective measures to dissuade such withdrawal and to respond vigorously to it, should it occur.

The issue of withdrawal by States that are in violation of the NPT has emerged as an important subject of debate, being a focus of discussion in Main Committee III at the 2005 NPT Review Conference, an explicit agenda item for the Preparatory Committee meetings for the 2010 Review Conference, and the subject of numerous working papers by various States Party - including the members of the European

Union, Australia, New Zealand, and the United States. Developing a common position regarding withdrawal from the Treaty under these circumstances will help ensure a prompt and appropriate international response in any future cases.

The Right to Withdraw

The right to withdraw from the NPT is enshrined in Article X.1, which provides that:

Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interest of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

All Parties possess such a right to withdraw, and this right cannot be eliminated without the Treaty's amendment pursuant to Article VIII.1. It has been correctly observed that the existence of a right of withdrawal is not an issue open to interpretation, and that it would not be appropriate to penalize withdrawal per se - for clearly the drafters of the Treaty envisioned that circumstances could arise in which a State Party would feel the need to withdraw from the NPT when confronted with a threat to its supreme interest.

Nevertheless, withdrawal from a treaty does not absolve a state of any violation of the Treaty that was committed while still a Party to the Treaty. Should a party withdraw from the Treaty before it remedies its violations, it should remain accountable for those violations.

Making Withdrawal Unattractive to Violators

Effective international action to ensure that violators will not benefit from their noncompliance and withdrawal would further strengthen the NPT, international peace and security, and reinforce norms that facilitate international nuclear cooperation because it would make both violation and Treaty withdrawal during or after violation less attractive.

Should a Party announce its intention to withdraw, Article X.1 provides an opportunity for the international community to address the situation. It is clear that the Treaty envisions that Parties will consider withdrawal only in the most serious of circumstances: those extraordinary events which jeopardize its "supreme interests." The requirement that notice of withdrawal be given to other Parties and the United Nations Security Council three months in advance also allows time for the international community to seek to influence the withdrawing party or to prepare to deal with the consequences of a completed withdrawal. The requirement that the withdrawing party include a statement in its notice of withdrawal explaining the circumstances it believes jeopardize its supreme interests - and the requirement that such events be related to the subject matter of the NPT - affords the international community an opportunity to consider the motivations and reasons of the withdrawing party, and to consider any responses that might be appropriate.

Although a decision to withdraw is a matter of national sovereignty, the international community should seek avenues of redress in the case of withdrawal by a violator of the NPT, especially where the violator wishes to continue the course of action that created the NPT violation.

When a notice of withdrawal has been given by a Party in violation of the NPT, the Security Council should immediately review the matter, and consult NPT Parties as appropriate to explore ways and means to address the issues raised by the notification of intent to withdraw. When given notice of withdrawal by a party in violation of the treaty, the U.N. Security Council should consider the potential consequences

of the intended withdrawal for international peace and security; it should meet promptly to consider the extraordinary events, related to the subject matter of th(e) Treaty, cited as reasons for withdrawal, as well as whether there are alternative measures to address and resolve the circumstances cited by the notice-giving party. An NPT violator's intention to withdraw will likely be coupled with the intention to acquire nuclear weapons. Accordingly, the Council should consider options consistent with the U.N. Charter that may be warranted - with regard to holding the withdrawing party responsible for its past noncompliance, addressing any threat to peace and security that its actions may present, or both.

The International Atomic Energy Agency (IAEA) and its Board of Governors could take steps to help ensure the continuation of safeguards should a Party in violation of the NPT complete the withdrawal procedures under Article X, ensure that the Security Council is fully informed of all relevant information in the IAEA's possession, and help prevent (e.g., through suspending supply agreements, a cessation of technical assistance, or the withdrawal of nuclear material and equipment) a State in violation of its NPT or IAEA obligations from profiting by association with the Agency. Because a State's withdrawal from the Treaty risks leaving nuclear materials and technology unsafeguarded, in cases where a violator has given notice of its intent to withdraw, the U.N. Security Council should meet promptly and seek to ensure that steps are taken to continue implementation of safeguards until such time as past violations have been remedied fully. Such withdrawing States also should be urged to conclude IAEA safeguards agreements that operate independently of NPT adherence (e.g., pursuant to INFCIRC/66).

States and their entities should not continue any nuclear supply or cooperation with a country that was in violation of the NPT at the time of its withdrawal, unless such a step is endorsed by the U.N. Security Council. Nor should such a withdrawing Party be allowed to benefit from the use of nuclear materials and equipment that it imported while it was an NPT Party. To this end, NPT nuclear supplier states should seek through appropriate means to halt the use of nuclear material and equipment previously supplied to the withdrawing state and to secure the elimination of such items or their return to the original supplier. NPT nuclear suppliers should reserve such rights in their bilateral nuclear supply arrangements and exercise them wherever appropriate. They should also reserve the right to terminate supply agreements with an NPT Party that violates its commitments and then withdraws from the Treaty.

NPT Parties should undertake effective actions to seek to dissuade a state from withdrawing while in violation of the Treaty. They should express opposition to such a step before, during, and after the Article X notice period. Parties might, for instance, consider holding an extraordinary meeting to consider such a case of withdrawal.

End paper on "Deterring and Responding to NPT Withdrawal by Treaty Violators"
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